GANESAN P. AWANTHAN

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMED DZAIDDIN J
[CRIMINAL APPLICATION NO. 7 OF 1983]
27 APRIL 1983

CRIMINAL LAW AND PROCEDURE: *Stay of execution - Application for stay of sentence pending hearing of appeal - Applicant convicted under s. 4(a) of Prevention of Corruption Act 1961 - 3 years' imprisonment - Sessions Court President refused to grant stay of sentence and release applicant on bail pending appeal - Whether President should have exercised her discretion in applicant's favour.*

This was an application for stay of execution of the sentence pending hearing of the appeal by the applicant who was convicted and sentenced to 3 years' imprisonment by the learned President Sessions Court, Kuala Lumpur for an offence under s. 4(a) of the Prevention of Corruption Act 1961. The applicant's Counsel then applied to the learned President under s. 311 of the Criminal Procedure Code for a stay of execution and bail pending appeal. The prosecution objected and the President accordingly disallowed the application.

Held:

[1] Although it is well settled that the granting of bail by the lower Court is a matter of discretion of the Magistrate or President concerned it is hoped that Magistrates and Presidents in the Subordinate Courts would consider the principle as laid down in *Mallal's Criminal Procedure*, 4th. Edn. p. 461 when exercising their discretions.

[2] The application in this particular case ought not to have come before this Court, but such application could have been granted by the Court of first instance.

[3] In the circumstances this application for a stay of execution is granted and the applicant is released on bail in the sum of RM3000 with two sureties.

[Application allowed. Stay of execution granted.]

Legislation referred to:
Criminal Procedure Code, s. 311
Prevention of Corruption Act 1961, s. 4(a)

Other sources referred to:
Mallal's Criminal Procedure, 4th Edn., p. 461

For the applicant - Gurbakhash Singh; M/s. Gurbakhash & Tan
For the respondent - Phang Ah Hee, DPP

JUDGMENT

Mohamed Dzaiddin J:

This is yet another application by way of Notice of Motion to this Court for stay of execution of the sentence pending hearing of the appeal. The applicant was charged for an offence under s. 4(a) of the Prevention of Corruption Act 1961, and at the conclusion of the case, the learned President, Sessions Court, Kuala Lumpur, convicted and sentenced him to three years' imprisonment. The applicant's Counsel then applied under s. 311 of the Criminal

Procedure Code for a stay of execution pending appeal and that bail be granted until the outcome of the hearing of the appeal. The prosecution objected and the learned President accordingly disallowed the application.

I do not know the reason why the learned President has refused this application. The only conceivable reason I could think of was that she has imposed a prison sentence against the applicant. It is well settled that the granting of bail by the lower Court is a matter of discretion of the Magistrate or President concerned. However, it has been stated on numerous occasions that the considerations which should guide the Subordinate Courts in granting or refusing bail pending appeal in cases where a term of imprisonment has been imposed are as follows:

(1) gravity or otherwise of the offence;

(2) the length of the term of imprisonment in comparison with the length of time which is likely to take for the appeal to be heard;

(3) whether there are difficult points of law involved;

(4) whether the accused is a first offender or has previous conviction;

(5) whether the accused would become involved again in another offence whilst at liberty; and

(6) whether the security imposed will ensure the attendance of the appellant before the appellate Court.

See: *Sek Kon Kim v. PP* (FTC Appn. 3/1983) (unreported).

In *Mallal's Criminal Procedure*, 4th Edn. p. 461, it is stated as follows:

> Bail should not be refused on the ground that the accused have been sentenced to a long term of imprisonment or that the granting of bail has a tendency to increase the number of appeals and of protracting the appellate proceedings. The discretion vested in the Court to grant bail should be judiciously exercised in accordance with the principles laid down by the Statutes on the facts of each particular case.

It is hoped the above principle would serve as guidance to Magistrates and Presidents in the Subordinate Courts when exercising their discretions in a matter like this particular case which, I feel, ought not to have come before this Court but such application could have been granted by the Court of first instance.

In the above circumstances, I grant this application for a stay of execution. The applicant is released on bail in the sum of RM3,000 with two sureties.

Also found at [1983] 1 CLJ 300